IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1100 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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ABHAJI DUNGARAJI MARVADI

Versus

DISTRICT MAGISTRATE

Appearance:

1. Special Civil Application No. 1100 of 2002

MR NM KAPADIA for Petitioner No. 1

MR SJ DAVE AGP for Respondent No. 1,3-4

MS PJ DAVAWALA for Respondent No. 2

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 02/05/2002

ORAL JUDGEMENT

By way of this Special Civil Application under Article 226 of the Constitution of India, the petitioner has challenged the order of detention dated 2-1-2002 passed by the District Magistrate, Ahmedabad in exercise

of powers under Section 3(2)) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980.

2. I have heard learned advocate for the petitioner at length and learned AGP, Mr.S.J.Dave for the respondents. I have also perused the material on record.

3. Mr.Kapadia has stated that one incident of seizure of kerosene and solvent on 19th of Septemebr, 2001 has been registered against the petitioner in passing the order of detention. Though various contentions were raised by the learned advocate for the petitioner in the petition, he has restricted his arguments on the point of delay in deciding the representation and communicating the same to detenu. According to learned advocate for the petitioner, the detenu has submitted a representation to the authority on 17-1-2002 and though it has been received by the authority on 19-1-2002, same has been decided on 28-1-2002 and communication of the same has been received by the detenu on 31-1-2002. To support his contention, he has taken me through Annexure-E, page 30 which is the copy of the representation sent by the petitioner. Mr.Kapadia, learned advocate for the petitioner has relied upon the case of Harish Pahwa Vs. State of U.P. and others, AIR 1981 S.C. 1126, more particularly para 3 which runs as under:

> "The representation made by a detenu has to be considered without any delay. The Supreme Court does not look at equanimity upon delays when the liberty of a person is concerned. Calling comments from other departments, seeking the opinion of Secretary after Secretary and allowing the representation to lie without being attended to is not the type of action which the State is expected to take in a matter of such vital importance. It is the duty of the State to proceed to determine representations with the utmost expedition, which means that the matter must be taken up for consideration as soon as such a representation is received and dealt with continuously (unless it is absolutely necessary to wait for some assistance in connection with it) until a final decision is taken and communicated to the detenu. Where this is not done the detention has to be declared unconstitutional."

4. In the present case, it appears that the

representation dated 17-1-2002 has been received by the authority on 19-1-2002 and it has been decided on 28-1-2002 and communication has been received by the detenu on 31-1-2002 and hence, there is a delay in deciding the representation. Though affidavit-in-reply has been filed on behalf of Union of India, State Government and the detaining authority, no satisfactory explanation has been given in any of the affidavits and hence, same remained uncontroverted. Aforesaid Affidavits are ordered to be taken on record.

5. Since no explanation has been putforth by the concerned authorities in their affidavits for not deciding the representation in time, the order of detention is illegal and the same cannot be sustained.

6 The petition is allowed. The impugned order of detention dated 2-1-2002 passed against the detenu is hereby quashed and set aside. The detenu Abhaji Dungaraji Marvadi is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly with no order as to costs. Direct service is permitted.

(R.P.DHOLAKIA,J.)

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